

§ 57.808 Opportunity for cross-examination.

(a) *Request for cross-examination.* After the close of the panel hearing conducted under this part, any participant in that hearing may submit a written request for cross-examination. The request shall be received by EPA within one week after a full transcript of the hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature; the extent to which they are in dispute in the light of the record made thus far, and the extent to which and why they can reasonably be considered material to the decision on the application for a waiver; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination requested can be expected to result in full and true disclosure resolving the issue of material fact involved.

(b) *Order granting or denying request for cross-examination.* As expeditiously as practicable after receipt of all requests for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall issue an order either granting or denying each such request, which shall be disseminated to all persons requesting cross-examination and all persons to be cross-examined. If any request for cross-examination is granted, the order shall specify:

(1) The issues as to which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place. In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly

repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further.

(c) *Supplementary hearing.* The Presiding Officer and at least one member of the original hearing panel shall preside at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A verbatim transcript shall be made of this hearing.

(d) *Alternatives to cross-examination.*

(1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submittal of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require that alternative means of clarifying the record be used whether or not a request to do so has been made under the preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

§ 57.809 Ex parte communications.

(a) *General.* (1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any member